76-962

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. [redacted]

ALBERT MILLER, JR.,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

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OCTOBER TERM, 1976

No. 76-1189

ALBERT MILLER, JR.,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

PRELIMINARY COMMENTS

This brief is a response in opposition to Petition for Writ of Certiorari filed pursuant to the request of this Honorable Court.

OPINION BELOW

In *Miller v. State,* 32 Md. App. 482 (1976) the Court of Special Appeals of Maryland in a reported opinion upheld the denial of post conviction relief to the Petitioner. The Court of Appeals of Maryland on October 26, 1976 declined to issue a writ of certiorari to the Court of Special Appeals.

JURISDICTION

The Petitioner has invoked the jurisdiction of this Honorable Court pursuant to the provisions of Title 28, U.S.C., Section 1257(3).

STATEMENT OF THE CASE

The Petitioner, Albert Miller, Jr., was charged in the Criminal Court of Baltimore under Indictment No. 6288 of 1969 with murder. He pled guilty on June 2, 1972 to murder in the first degree and was sentenced to a term of life imprisonment by the Honorable Solomon Liss presiding in the Criminal Court of Baltimore. No direct appeal was taken from the guilty plea.

The Petitioner thereafter filed a Petition for Post Conviction Relief alleging that his plea was involuntarily entered. Relief under that Petition was denied and from a denial of post conviction relief and upon an order granting leave to appeal the Petitioner pursued an appeal in the Court of Special Appeals of Maryland. That Court in a reported opinion affirmed Judge Albert L. Sklar's denial of post conviction relief.

STATEMENT OF FACTS

The Respondent adopts as its Statement of Facts Appendix C of the Petition for Writ of Certiorari filed by the Petitioner in the premises, pages A. 10 through A. 24 since that is the entire transcript of proceedings before Judge Liss on June 2, 1972.

QUESTION PRESENTED

Whether a guilty plea is valid under the dictates of *Boykin v. Alabama,* 395 U.S. 238 (1969) if no reference is made to a criminal defendant's privilege against self-incrimination?

ARGUMENT IN OPPOSITION TO ALLOWANCE OF THE WRIT

A GUILTY PLEA IS NOT IN VIOLATION OF *BOYKIN v. ALABAMA*, 395 U.S. 238 (1969), IF THE RECORD DOES NOT SPECIFICALLY REFLECT THAT THE DEFENDANT IS NOT ADVISED OF HIS PRIVILEGE AGAINST SELF-INCRIMINATION SO LONG AS A REVIEWING COURT CAN ASCERTAIN FROM THE TOTALITY OF THE CIRCUMSTANCES THAT THE PLEA IS ENTERED FREELY, VOLUNTARILY AND UNDERSTANDINGLY.

The Court of Special Appeals of Maryland in considering this question presented by the Petitioner concluded that there is no question that the record of proceedings in a guilty plea must reflect under the totality of the circumstances that a criminal defendant has entered a confession of guilt voluntarily and understandingly. The Court of Special Appeals concluded that it was not required to review the record of the hearing in order to determine if the trial court employed any particular prophylactic procedure before accepting that plea. From the record of proceedings below the Court of Special Appeals found that the Petitioner had an unusually thorough understanding of the felony murder doctrine under which he had been charged and there was also no question that the Petitioner freely and voluntarily admitted that he had entered a store with the intention of committing a robbery and that the victim had been murdered in the course of the robbery. The Court also found that the Petitioner indicated a thorough understanding of the nature of the plea bargain, that the State would recommend life imprisonment and would *nol pros* a robbery indictment and that any appeal rights he may have from his conviction were waived as a result of this plea other than jurisdictional grounds or on the grounds that the plea itself was not voluntarily given.

The Court found that the record was a product of thorough preparation by trial counsel for the defendant

who had obviously interviewed and advised the Petitioner at great length and that, therefore, the Court could draw no other conclusion except that the Petitioner knew precisely the consequences of his plea of guilty and did so voluntarily and freely with full knowledge of the constitutional rights which he thereby waived. Relying on a recent Court of Appeals of Maryland case, *Davis v. State*, 278 Md. 103 (1976) the Court stated that there was no longer a necessity that any particular ritualistic litany be performed so long as the accused comprehended the nature of his decision to plead guilty and did so of a free will. In so stating the Court also indicated in a footnote that it was no question in its mind but that the Petitioner had been advised of the privilege by his counsel prior to the hearing since it was apparent that the Petitioner had been thoroughly schooled, citing *Stevens v. State*, 232 Md. 33 (1963) and *State v. McKenzie*, 17 Md. App. 563 (1973).

The legal predicate upon which the Court of Special Appeals ruled was the scholary opinion of the Court of Appeals of Maryland filed by Judge Digges in *Davis v. State, supra,* in which Judge Digges traced the recent history of litigation with regard to the acceptance or rejection of guilty pleas generally. It is difficult to expand upon Judge Digges' analysis of the law. The Court's attention, however, is directed towards pages 116 through 118 of *Davis v. State* at 278 Md. in which Judge Digges lists federal and state decisions which are in direct accord with the Court of Special Appeals opinion in *Miller v. State* and also with the Court of Appeals decision in *Davis v. State.* Among the circuits which have agreed in essence with this position is the Second Circuit, *Hill v. Turnullo,* 510 F.2d 844, 845 (1975) (reserving judgment), the Fourth Circuit, *Wate v. Coiner,* 468 F.2d 1059 (1972); Fifth Circuit, *United States v. Frontero,* 452 F.2d 406, 415 (1971); Sixth

Circuit, *Roddy v. Black,* 516 F.2d 1380 (1975), *cert. denied,* 423 U.S. 917; Seventh Circuit, *United States Ex Rel. Montgomery v. Illinois,* 473 F.2d 1382 (1973) (*per curiam*); Eighth Circuit, *Todd v. Lockhart,* 490 F.2d 626 (1974) (*per curiam*); and the Ninth Circuit, *Wilkins v. Erickson,* 505 F.2d 761 (1974). Additionally Florida, Massachusetts, Minnesota, Missouri, Nebraska, Oregon, Texas, Wisconsin, Nevada, Ohio, Michigan, Alaska, South Dakota and Arizona have also indicated that the interpretation placed on *Boykin v. Alabama, supra,* by the Court of Special Appeals of Maryland in the Petitioner's case is a direct view. See *Barrett v. State,* 544 P.2d 830 (1975); *Hall v. State,* 273 S.2d 90 (1973); *State v. Propotnik,* 216 N.W.2d 637 (1974); *State v. Conner,* 500 S.W.2d 300 (1973); *State v. Turner,* 183 N.W.2d 763 (1971); *Raisley v. Sullivan,* 493 P.2d 745 (1972); *Franks v. State,* 513 S.W.2d 584 (1974); *Jones v. State,* 207 N.W.2d 890 (1973); *People v. Kuzhulan,* 213 N.W.2d 95 (1973); *Heffley v. Warden,* 516 P.2d 1403 (1973); *State v. B chanan,* 334 N.E.2d 503 (1974); *Merrill v. State,* 206 N.W.2d 828 (1973); and, *State v. Williker,* 491 P.2d 465 (1971).

CONCLUSION

Respondent respectfully requests, upon the foregoing points and authorities and arguments, that the Petition for Writ of Certiorari to the Court of Special Appeals of Maryland be denied.

Respectfully submitted,

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